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Washington, DC 20224

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PLR-137277-13

Date: March 7, 2014

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Business A =

Business B =

State A =

aa =

bb =

cc =

dd =

ee =

ff =

gg =

hh =

ii =

jj =

kk =

ll =

mm =

Authority 1 =

Authority 2 =

Group A =

Group B =

Group C =

Group D =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Market 1 =

Market 2 =

Dear :

This letter responds to your August 22, 2013 request for rulings as to the U.S. federal income tax consequences of a series of Proposed Transactions (defined below). The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by the appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the transaction described herein: (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see section 355(e) and Treas. Reg. § 1.355-7).

SUMMARY OF FACTS

Distributing is a State A corporation that is the parent of a group of limited liability companies and nonconsolidated corporate subsidiaries. Distributing has two classes of voting common stock outstanding (the "Distributing Common Stock") and warrants having an exercise price of \$aa per share of Distributing Common Stock (the "Penny Warrants"). Distributing has outstanding indebtedness consisting of a term loan facility.

In connection with the Proposed Transactions, Distributing formed Controlled, which has one class of voting common stock (the “Controlled Common Stock”), all of which is owned by Distributing.

Upon payment of the exercise price described above, each Penny Warrant may be converted into a share of Distributing Common Stock. Owners of the Penny Warrants are also entitled to the same dividend rights as are owners of the Distributing Common Stock, unless such dividend is prohibited by Authority 1.

The Distributing Common Stock and Penny Warrants are widely held and traded on Market 1. During the three months preceding Date 4, Distributing’s Common Stock and Penny Warrants traded on Market 1 with an average daily volume of more than bb shares.

As of Date 3, approximately cc% of the Distributing Common Stock and Penny Warrants was owned by Group A, dd% by Group B, ee% by Group C, and ff% by Group D. To the knowledge of Distributing, no other person currently owns 5% or more of the outstanding Distributing Common Stock and Penny Warrants.

On Date 1, pursuant to a plan of reorganization in a title 11 case (the “Plan”), ownership of Distributing was transferred to a group of creditors of Distributing which included Group A, Group B, Group C and Group D (collectively, the “Creditors”). The restructuring of Distributing pursuant to the Plan was contested among multiple parties pursuing adverse interests. As a result of the consummation of the Plan, Distributing converted from a subchapter S corporation to a subchapter C corporation.

Distributing, through its “separate affiliated group” (“SAG”), engages in Business A and Business B. Distributing presently engages in Business B through Sub 1, which has elected to be treated as a corporation for U.S. federal income tax purposes, and its SAG. Following the Proposed Transactions, Distributing, through its SAG, will continue to be engaged in Business A.

Financial information has been submitted which indicates that each of Business A and Business B has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Prior to the Proposed Transactions, Distributing indirectly owned through its subsidiaries a gg% interest in Sub 2 and directly owned a hh% interest in Sub 3.

Certain Business B operations are parties to an operating agreement with a third party in which Distributing indirectly owns a ii% interest (the “Affiliation Agreement”) that generates substantial revenue for Business B. Pursuant to the Affiliation Agreement, if Distributing (together with its affiliates) were to cease to own at least a jj% voting and economic interest in Business B, the third party could terminate the Affiliation Agreement. However, if Distributing (together with its affiliates) directly or indirectly

retained at least a kk% voting and economic interest in Business B, it could elect to enter into a modified affiliation agreement (the “Modified Affiliation Agreement”) for Business B for a period of up to five years.

It is highly desirable for Business B to obtain a Modified Affiliation Agreement. Accordingly, Distributing will retain an interest of ll% (slightly more than kk%) in Controlled in order to obtain a Modified Affiliation Agreement. In the unlikely event that Distributing’s interest in Controlled is diluted below kk% due to subsequent issuances of Controlled Common Stock during the five-year period following the Distribution, Distributing and Controlled may discuss the possibility of Distributing temporarily acquiring additional shares in Controlled to maintain the kk% ownership interest required to avoid termination of the Modified Affiliation Agreement. However, any such transaction would only be entered into after review and approval by each of Distributing and Controlled, acting independently through their respective officers and boards of directors. Any additional shares so acquired would be voted and disposed of within the five-year period following the Distribution in the same manner as the originally retained shares of Controlled Common Stock (see representations (bb) and (cc)).

Distributing will distribute to its shareholders and Penny Warrant-holders in the Distribution mm% (greater than 80%) of the Controlled Common stock outstanding at the time of the Distribution. The retention by Distributing of the ll% interest in Controlled does not have as one of its principal purposes the avoidance of U.S. federal income tax. The sole business purpose for the retention by Distributing of a nominal interest in Controlled is to preserve the right to enter into and maintain a Modified Affiliation Agreement.

Distributing’s management believes that the separation of Business B from Distributing’s other business segments will serve a number of corporate business purposes, including (1) to enhance the success of each of Distributing and Controlled by allowing each to focus on its respective core business; (2) to relieve regulatory restrictions on the ability of either Distributing or Controlled to enter into certain markets (as a result of current cross-ownership restrictions); (3) to enhance the effectiveness of Distributing and Controlled’s equity-linked compensation; (4) to facilitate future acquisitions and to create more attractive acquisition currencies for both Distributing and Controlled; (5) to allow for different capital structures and leverage levels for Distributing and Controlled, allowing each entity to achieve an optimal capital structure and leverage level for its respective business profile; and (6) to facilitate a potential future public offering of Distributing, the proceeds of which would be used to fund strategic growth initiatives and to reduce the indebtedness of Distributing and its subsidiaries to third parties.

PROPOSED TRANSACTIONS

For what are represented to be valid business reasons, the following series of transactions (the “Proposed Transactions”) has been proposed, portions of which have been completed:

(i) Distributing previously contributed to Sub 1 its interests in Sub 2 and Sub 3 and prior to the date of the Distribution, Distributing will contribute certain other assets and liabilities of Distributing expected to be used by Controlled in the operation of Business B following the Distribution.

(ii) On or shortly prior to the date of the Distribution, any open intercompany account balances existing between Distributing and Sub 1 will be cancelled, assumed by Controlled pursuant to Step (iii) below, or otherwise settled.

(iii) On or shortly prior to the date of the Distribution, Distributing will contribute its interests in Sub 1 to Controlled, and Controlled will assume certain liabilities associated with the Business B to the extent not already assumed by Sub 1 (the “Contribution”).

(iv) Controlled (directly or through one or more disregarded entities) will borrow from unrelated financial institutions or through capital markets transactions and distribute the proceeds of such borrowing (the “Special Payment”) to Distributing in connection with the Contribution.

(v) Distributing will distribute mm% of its interest in Controlled to its shareholders and Penny Warrant-holders pro rata (the “Distribution”). Distributing will use the Special Payment to repay debt owed by Distributing to unrelated third parties.

Controlled intends to apply to list the Controlled Common Stock for trading on Market 2 following the Distribution. Distributing may also register with Authority 2 and list for trading on an exchange all or a portion of, and/or make a public offering of, the Distributing Common Stock at some point in time following the Distribution.

In connection with the Proposed Transactions, Distributing, Controlled and their respective subsidiaries will enter into various agreements that are ancillary to the Distribution, including certain transitional and other agreements and a tax-sharing agreement (the “Continuing Agreements”). Any services provided between Distributing and Controlled beyond the two-year period following the Distribution will be negotiated at such time at arm’s length, and any payments for such services will be for fair market value.

REPRESENTATIONS

Distributing has made the following representations regarding the Contribution and the Distribution:

- (a) Indebtedness, if any, owed by Controlled to Distributing after the Distribution will not constitute stock or securities.
- (b) Except for the receipt of Controlled Common Stock by holders of restricted Distributing Common Stock who have not made a valid election under section 83(b), no part of the consideration to be distributed by Distributing will be received by any shareholder or Penny Warrant-holder of Distributing as a creditor, employee, or in any capacity other than that of a shareholder or Penny Warrant-holder of Distributing, provided that portions of the Special Payment may be received by creditors of Distributing that are also, or that are affiliates of, shareholders or Penny Warrant-holders of Distributing.
- (c) Distributing and Controlled each will treat all members of their respective SAGs (as defined in section 355(b)(3)(B)) as one corporation in determining whether the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.
- (d) No part of the Special Payment to be transferred by Distributing to its creditors will be received by a creditor as an employee or in any capacity other than that of a creditor of Distributing.
- (e) The five years of financial information submitted on behalf of Distributing is representative of the present operations of Business A, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted, other than to reflect acquisitions of Business A assets that would be viewed as expansions under Treas. Reg. § 1.355-3(b)(3)(ii).
- (f) The five years of financial information submitted on behalf of Controlled is representative of the present operations of Business B, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted, other than to reflect acquisitions of Business B assets that would be viewed as expansions under Treas. Reg. § 1.355-3(b)(3)(ii).
- (g) Neither Business A conducted by Distributing nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, other than acquisitions of Business A assets that would be viewed as expansions of Business A or disregarded under Treas. Reg. § 1.355-3(b)(3)(ii).
- (h) Neither Business B to be conducted by Controlled following the Contribution nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Distribution in a transaction in

which gain or loss was recognized (or treated as recognized) in whole or in part, other than acquisitions of Business B assets that would be viewed as expansions of Business B or disregarded under Treas. Reg. § 1.355-3(b)(3)(ii).

- (i) Following the Distribution, Distributing and Controlled, directly or through their respective SAGs, will each continue the active conduct of their respective businesses independently and with their separate employees, except for certain transitional and administrative support services that are being provided under the Continuing Agreements.
- (j) The Distribution is being carried out for the corporate business purposes listed below and is motivated, in whole or substantial part, by one or more of these corporate business purposes: (1) to enhance the success of each of Distributing and Controlled by allowing each to focus on its respective core business; (2) to relieve regulatory restrictions on the ability of either Distributing or Controlled to enter into certain markets (as a result of current cross-ownership restrictions); (3) to enhance the effectiveness of Distributing and Controlled's equity-linked compensation; (4) to facilitate future acquisitions and to create more attractive acquisition currencies for both Distributing and Controlled; (5) to allow for different capital structures and leverage levels for Distributing and Controlled, allowing each entity to achieve an optimal capital structure and leverage level for its respective business profile; and (6) to facilitate a potential future public offering of Distributing, the proceeds of which would be used to fund strategic growth initiatives and to reduce the indebtedness of Distributing and its subsidiaries to third parties.
- (k) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (l) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the 5-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (m) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock or securities that were

acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.

- (n) Any liabilities assumed (within the meaning of section 357(d)) by Controlled in the Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.
- (o) Distributing will use the Special Payment proceeds distributed to it by Controlled to repay debt owed by Distributing to unrelated third parties (the "External Debt"). Such proceeds will be held in a segregated account until they are used as described above.
- (p) The External Debt repaid with the proceeds of the Special Payment will not exceed the weighted quarterly average of the External Debt for the period from Date 1 to Date 2.
- (q) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Distribution.
- (r) No indebtedness between Distributing (and its subsidiaries) and Controlled (and its subsidiaries) has been or will be cancelled in connection with the Distribution other than the settlement of open intercompany account balances and other intercompany loans attributable to normal business operations of Distributing and its subsidiaries prior to the Distribution.
- (s) No intercorporate debt will exist between Distributing (or any of its subsidiaries) and Controlled (or any of its subsidiaries) at the time of, or subsequent to, the Distribution, except for payables arising under transitional agreements or in the ordinary course of business.
- (t) The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.
- (u) Except for certain payments that will be made in connection with certain service agreements that are transitional in nature, payments made in connection with any continuing transactions between Distributing (and its subsidiaries) and Controlled (and its subsidiaries) following the Distribution will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (v) No two parties to the Distribution are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).

- (w) Treating acquisitions of Distributing Common Stock on Market 1 by a person that is not a “controlling shareholder”, a “ten-percent shareholder”, or a member of a “coordinating group” that is a “controlling shareholder” or a “ten-percent shareholder” of Distributing (within the meaning of Treas. Reg. § 1.355-7(h)(3), (4) and (14)) as not resulting in any “acquisitions” for purposes of section 355(e), the Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (x) Immediately after the Distribution, neither Distributing nor Controlled will be a “disqualified investment corporation” as defined in section 355(g)(2)(A).
- (y) Neither Distributing nor Controlled has been at any time during the five-year period ending on the date of the Distribution a United States Real Property Holding Corporation, as defined under section 897(c)(2) and Treas. Reg. § 1.897-2(b).
- (z) The business purpose for the stock retention is to preserve the right of Business B to enter into and maintain a Modified Affiliation Agreement that is expected to generate substantial revenue for Business B.
- (aa) None of Distributing’s directors or officers will serve as directors or officers of Controlled as long as Distributing retains the Controlled stock.
- (bb) Distributing will dispose of the retained stock of Controlled as soon as a disposition is warranted consistent with the business purpose for the retention, but in any event, not later than 5 years after the Distribution.
- (cc) Distributing will vote the retained stock of Controlled in proportion to the votes cast by other shareholders of Controlled.
- (dd) The aggregate fair market value of the assets transferred to Controlled in the Contribution will equal or exceed the aggregate adjusted basis of those assets immediately after the Contribution.
- (ee) Distributing, Controlled, and the shareholders of Distributing will pay their respective expenses, if any, incurred in connection with the Distribution.
- (ff) The distribution of Controlled stock to Distributing’s shareholders and Penny Warrant-holders in the Distribution is with respect to their ownership of Distributing stock and Penny Warrants.

- (gg) Any money, property, or stock contributed by Distributing to Controlled in the Contribution will be exchanged solely for stock in Controlled and the Special Payment.
- (hh) The total adjusted basis and the fair market value of the assets transferred to Controlled in the Contribution will equal or exceed the sum of (i) the total liabilities assumed (within the meaning of section 357(d)) by Controlled, and (ii) the total amount of any money and the fair market value of any other property (within the meaning of section 361(b)) received by Distributing and transferred to its creditors in connection with the Contribution.

RULINGS

Based solely on the information submitted and the representations set forth above, and provided that (i) the distribution of Controlled Common stock to Distributing's shareholders and Penny Warrant-holders in the Distribution is with respect to their ownership of Distributing Common Stock and Penny Warrants, (ii) any money, property, or stock contributed by Distributing to Controlled in the Contribution is exchanged solely for stock or securities in Controlled and the Special Payment, and (iii) any other transfer of stock, money, or property between Distributing, Controlled, or any Distributing shareholder or Penny Warrant-holder and any person related to Distributing, Controlled, or any Distributing shareholder or Penny Warrant-holder is respected as a separate transaction, we rule as follows:

- (1) The Contribution (including the receipt by Distributing of the Special Payment), followed by the Distribution, will be a reorganization under section 368(a)(1)(D). Distributing and Controlled will each be "a party to the reorganization" within the meaning of section 368(b).
- (2) Distributing will not recognize any gain or loss on the Contribution, including the receipt by Distributing of the Controlled Common Stock (section 361(a)), the Special Payment (provided it is distributed to the creditors) (section 361(b)), and the assumption of any liabilities (section 357(a)).
- (3) Controlled will not recognize any gain or loss on the Contribution (section 1032(a)).
- (4) Controlled's basis in each asset received in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the Contribution (section 362(b)).
- (5) Controlled's holding period in each asset received in the Contribution will include the period during which Distributing held that asset (section 1223(2)).

- (6) Distributing will not recognize any gain or loss on the Distribution (section 361(c)(1)).
- (7) The Distributing shareholders and Penny Warrant-holders will not recognize any gain or loss (and will not otherwise include any amount in income) upon the receipt of Controlled Common Stock in the Distribution (section 355(a)).
- (8) Each Distributing shareholder's and Penny Warrant-holder's basis in Distributing Common Stock or Penny Warrants and Controlled Common Stock immediately after the Distribution will equal its basis in its Distributing Common Stock or Penny Warrants immediately before the Distribution, allocated between the Distributing Common Stock or Penny Warrants and Controlled Common Stock in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a) (section 358(a), (b), and (c)).
- (9) Each Distributing shareholder's and Penny Warrant-holder's holding period in the Controlled Common Stock received will include the holding period of the Distributing Common Stock and Penny Warrants with respect to which the distribution of the Controlled Common Stock is made, provided that the Distributing Common Stock and Penny Warrants are held as capital assets on the date of the Distribution (section 1223(1)).
- (10) Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).
- (11) Any payments between Distributing and Controlled that are made following the Distribution regarding obligations that (i) have arisen or will arise for a taxable period ending on or before the Distribution or for a taxable period beginning before but ending after the Distribution and (ii) will not have become fixed and ascertainable until after the Distribution, will be treated as occurring immediately before the Distribution (cf. *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).
- (12) For purposes of section 355, the Penny Warrants will be treated as stock (Rev. Rul. 82-150, 1982-2 C.B. 110).
- (13) The 11% of Controlled stock retained by Distributing satisfies the requirements of section 355(a)(1)(D)(ii) and Treas. Reg. § 1.355-2(e).

CAVEATS

No opinion is expressed about the federal income tax treatment of the Proposed Transactions under other provisions of the Code and regulations or the federal income tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the transaction described herein: (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see section 355(e) and Treas. Reg. § 1.355-7).

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, any taxpayer filing its return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Lisa A. Fuller

Lisa A. Fuller
Chief, Branch 5
Office of the Associate Chief Counsel
(Corporate)